A.F.R.

26-06-2006

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.5975/1998

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioner : R.A.Desh Pandey, son of late Shri A.R.Deshpandey, aged about 68 years, R/o Shyamnagar, Raipur (MP)

Versus

Respondents :
1. State of Madhya Pradesh, Through Secretary, Department of Tribal Harijan and Backward Classes, Welfare Department, Bhopal.
2. Director of Tribal Welfare Department, Govt. of M.P. BHOPAL (MP)
3. M.P.State Administrative Tribunal, Jablpur, Through its Registrar.

Smt. Renu Kochar, Counsel for the petitioner.
Shri Prashant Mishra, Addl. Advocate General with Shri Utkarsh Verma, Dy. G.A. for the State.

ORAL ORDER
(Passed on 26th June 2006)

The following oral order of the Court was passed by S.R.Nayak, C.J.

This writ petition is directed against the order dated 1.9.1998 of the M. P. Administrative Tribunal (for short "the Tribunal") passed in Transferred Application No.2966/88. By the said order, the Tribunal has dismissed the application of the petitioner herein and has affirmed the order dated 08.10.1984 of the State Government compulsorily retiring the petitioner under Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short "the Rules).

2. The petitioner was appointed as Circle Organizer in the Department of Tribal Welfare on 27.04.1953. In the year 1968, the petitioner was promoted to the post of Area Organizer. While in service the petitioner passed departmental examinations. The

Government passed an order on 8.6.1984 permitting the petitioner to cross the Efficiency Bar w.e.f. 4.4.1976. While the matter stood thus, the Government passed the impugned order dated 8.10.1984 under Rule 42 of the Rules.

3. The petitioner being aggrieved by the above order of the Government dated 8.10.1984, instituted Miscellaneous Petition No.3544/84. In the said petition, several grounds were urged, such as, the action of the Government in compulsorily retiring the petitioner under Rule 42 of the Rules is *mala fide* and it was done with an ulterior motive; that as per the Circular of the State Government dated 18.1.1983, the Government ought to have taken into account the A.C.Rs of the 5 years immediately prior to the date of retirement whereas it took into consideration A.C.Rs of the year 1974-75 to 1978-79; that there was no material on record to show that anything adverse against the petitioner; that the impugned action of the Government was not in public interest; that the impugned action is arbitrary, unreasonable etc.; that the impugned order is vitiated because while passing the order, the Government took into consideration the uncommunicated adverse remarks in violation of principles of natural justice etc.

4. The Government by filing return supported the impugned action. The Tribunal without finding merit in the contentions of the petitioner, by its order dated 1.9.1998, dismissed the petition.

5. We have heard Smt. Renu Kocher, learned counsel for the petitioner and Shri Prashant Mishra, Addl. Advocate General for the State with Shri Utkarsh Verma, Dy. Government Advocate. It was contended by the learned counsel for the petitioner that the impugned order could not be sustained for more than one reason. It was submitted that the Government itself on 8.6.1984, having satisfied itself that the petitioner had continued utility and competency to be in public service, allowed the petitioner to cross the Efficiency Bar and for some undisclosed reasons within a short time

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of 4 months, he was arbitrarily compulsorily retired by resorting to Rule 42 of the Rules, and therefore, the action should be condemned as arbitrary, unreasonable and violative of Article 14 postulates. It was also contended that as per the Circular issued by the Government of M.P. dated 18.01.1983, the Screening Committee should have taken into account the A.C.Rs of the petitioner for five years immediately preceding the date of the order, whereas, admittedly, the A.C.Rs of the year 1974-75 to 1978-79 were taken into consideration and on that count also, the impugned order could not be sustained. It was further contended that A.C.Rs of the petitioner for the years 1979-80, 1981-82, 1982-83 and 1983-84 are quite favourable to the petitioner, whereas the Screening Committee refused to take into account the A.C.Rs of those years. It was also pointed that even the A.C.Rs of the year 1982-83, which is quite favourable to the petitioner, in the sense that the Reporting Officer, on 5.6.1984, had stated that the petitioner is a very good officer and good relations with subordinates and superior officers and graded him as "very good" and that opinion of the Reporting Officer was agreed to by the Reviewing Officer, the same was not taken into account on the ground that no record was made available to the Screening Committee to show that the above opinion of the Reporting Officer and Reviewing Officer was accepted by Accepting Authority.

6. Shri Prashant Mishra, learned Additional Advocate General, per contra, would contend that the Screening Committee while considering whether an Official should be compulsorily retired or not under Rule 42 of the Rules is entitled to take into account the entire service record of the Official concerned, and therefore, there was nothing wrong on the part of the Screening Committee in taking into account the A.C.Rs of the petitioner for the years 1974-75 and 1978-79 which were adverse to the petitioner. Learned Addl. Advocate General would also highlight that the considerations which go into the decision-making while considering an Officer for promotion or while

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allowing him to cross Efficiency Bar and the considerations which are germane to the decision-making under Rule 42 of the Rules are not identical, and therefore, the Screening Committee, having taken into account the entire service records of the petitioner, thought it appropriate to retire the petitioner compulsorily under Rule 42 of the Rules. Learned Addl. Advocate General would also draw our attention to what is observed by the Tribunal in paragraph 17 of the order.

7. Having heard the learned counsel for the parties, a short question that arises for decision is whether the petitioner has made out any ground to interfere with the order of the State Government dated 8.10.1984. The petitioner was retired compulsorily under clause-b of sub-rule (1) of Rule 42 of the Rules which reads as follows:

> "42. **Retirement on completion of 20/25 years qualifying service.**-[(1)(a) *A Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form 28, to the appointing authority at least three months before the date on which he wishes to retire or on payment by him of pay and allowances for the period of three months or for the period by which the notice actually given by him falls short of three months:*
>
> Provided that where the Government servant giving such notice is under suspension, he shall not be allowed to retire from service without the prior permission in writing of the appointing authority.
>
> (b)The appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed 25 years qualifying service, with the approval of the State Government by giving him three months notice in Form 29:
>
> Provided that such Government servant may be retired forthwith and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing then immediately before his retirement or, as the case may be, for the period by which such notice falls short of three months.

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(2) A Government servant who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority on consideration of the circumstances of the case to withdraw the notice given by him:

Provided that the request for withdrawal shall be prior to the intended date of his retirement.

(3) Where the notice of retirement has been served by appointing authority on the Government servant, it may be withdrawn, if so desired for adequate reasons, provided that the Government servant concerned is agreeable."

There are two substantial conditions, which should be satisfied before the State Government could require a government servant to retire from service in terms of clause-b of sub-rule (1) of Rule 42 of the Rules and they are; (i) that the Government servant concerned has completed 25 years of qualifying service, and (ii) that the Appointing Authority must record a satisfaction that retirement of such Government servant is necessary in the 'public interest'. It is true that while forming an opinion whether a Government servant should be retired from service under clause-b of Rule 42 or not the Government could take into account entire facts and circumstances of the case the whole service record of the officer. At the same time, the Appointing Authority has to consider the expediency and feasibility to retire a Government servant from service prematurely only in the public interest and not on any other considerations. It is trite that while Appointing Authority considering the case in the public interest, it would necessarily take into account the continued utility and efficiency of the Government servant apart from his integrity. If we may say so, that will be the substantive consideration for the Appointing Authority to consider while deciding whether the retirement of a Government servant is in the public interest or not.

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If the continued utility and efficiency is a substantive consideration while deciding the public interest, it needs to be noticed that just 4 months before the petitioner was retired compulsorily under clause-b of Rule 42, he was found to possess continued utility and efficiency to continue in public service and that is why by order dated 8.6.1984 (Annexure P-3), he was allowed to cross Efficiency Bar. In the course of arguments, learned Additional Advocate General did not bring to our notice any adverse materials on the basis of which we could satisfy ourselves that during the interregnum between 8.6.1984 to 8.10.1984, the petitioner had lost the continued utility and efficiency to be in the public service. Every public power is limited and is required to be exercised fairly, reasonably and respecting the mandates of the Article 14 of the Constitution. It is true that the scope of judicial review in the matter of the State's power to retire a government servant prematurely under any enabling provisions is very much limited and circumscribed, but, that power has to be exercised reasonably and fairly and not on extraneous consideration nor on fanciful and whimsical assumptions about a Government servant with regard to his continued utility and efficiency. The Supreme Court, having considered the parameters of the power of the State Government to compulsorily retire a Government servant under an enabling provision, has summed up the law in paragraph 32 of the judgment in the case of **Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another.**[1] The Apex Court has laid down principles which are as under:

> "32. The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
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> (iii) Principles of natural justice have no place in the

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context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remaks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority. (emphasis is supplied)

(v) An order or compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed paras 29 to 31."

8. The underlined observation of the Supreme Court in sub-para (iv) of paragraph 32 is apt to be kept in mind in the context of this case.

9. The judgment of Supreme Court in the case of **D.Ramaswami v. State of Tamil Nadu**[2] is also apt to be noted. In that case, what fell for decision-making was an order of the Government prematurely retiring an officer immediately after his promotion and appointment to coveted selection post. The appellant therein entered the public service as a Lower Division Clerk in 1953. He was promoted as an

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1. A.I.R. 1992 S.C. 1020. 2. A.I.R. 1982 S.C. 792.

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Assistant Commercial Tax Officer in 1954, next as a Deputy Commercial Tax Officer in 1957, then as a Joint Commercial Tax Officer in 1962, thereafter as a Commercial Tax Officer in 1966, later as an Assistant Commissioner of Commercial Taxes in 1972 and finally as Deputy Commissioner of Commercial Taxes on 7.5.1975. On promotion as Deputy Commissioner of Commercial Taxes he was posted as Member of the Sales Tax Appellate Tribunal in the same cadre. On September 20, 1975, he was retired under Fundamental Rule 56 (d). His Service Book showed that he had an excellent record of service. He had earned several encomiums, commendations and appreciations. Nevertheless his service record for the year 1969 showed a black mark in his service. In his confidential file maintained by Deputy Commissioner of Commercial Taxes, it was noted thus:

> "This Commercial Tax Officer is a very intelligent and capable officer who kept the entire district under his control in perfect discipline. Unfortunately, his reputation is not at all good. There were complaints that he used to threaten dealers and take more money. The entire matter is under investigation by the Vigilance and Anti-Corruption Department."

There was an enquiry by the Directorate of Vigilance and Anti Corruption. Charges were framed against the appellant by the Board of Revenue. The explanation of the appellant was obtained. The Full Board of Revenue, having perused the explanation of the appellant, opined that the charges should be dropped. The Government accepted the report of the Full Board and dropped the charges vide its order dated 29.11.1974. Further, within a few months, that is to say, on May 7, 1975, he was promoted to Deputy Commissioner of Commercial Taxes and posted as Member, Sales Tax Appellate Tribunal. It appears that he was immediately compulsorily retired under Fundamental Rules 56(d).

When that action was assailed on behalf of the State, it was contended that the Government was entitled to take into

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consideration the entire history of the appellant including that part of it which was prior to his promotion as Deputy Commissioner of Commercial Taxes. The Supreme Court while dealing with the above submission made on behalf of the State Government of Tamil Nadu in paragraph 4 of the judgment observed thus:

> "In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a Government should be completely ignored, once he is promoted. Sometimes, past events may help to assess present-conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

The ratio of the above judgment squarely applies to the facts of this case also.

Notwithstanding the adverse remarks, whatever might be against the petitioner before 8.6.1984 from the inception of his service, the Appointing Authority formed an opinion that the Officer possessed continued utility and efficiency and he could be allowed to cross the Efficiency Bar. There is absolutely no reason for us to think that the Government passed the order on 8.6.1984 allowing the petitioner to cross the Efficiency Bar without taking into account the adverse materials against him. In fact, that was not the case of the Government. If that is the factual position, even assuming that there were adverse materials before 8.6.1984 against the petitioner, with the passing of the order permitting the petitioner to cross the Efficiency Bar, all those adverse materials "lose their sting", if we may borrow the expression of the Apex Court in sub-para (iv) of paragraph 32 of the judgment in the case of **Baikuntha Nath Das**

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case (supra[1]). Furthermore, there is no material whatsoever to show that during the interregnum between 8.6.1984 and 8.10.1984 any adverse material against the petitioner came into existence warranting his compulsory retirement under Rule 42 of the Rules.

10. We also find substance in the contention of the learned counsel for the petitioner that the Government ought to have taken into account the A.C.Rs' of only 5 years immediately preceding the date of the impugned order, and if the A.C.Rs of those years were taken into account, it could have seen that the petitioner earned good grades with regard to all vital aspects of public service. In our considered opinion, the Tribunal is not justified in ignoring/eschewing the favourable A.C.Rs of the petitioner on the ground that there is nothing on record to show that any record was placed before the Screening Committee to show that the good remarks made by the Reporting Authority and Reviewing Authority are accepted by the Accepting Authority. Even assuming that as on 8.10.1984, the Accepting Authority did not accept the remarks recorded by the Reporting Officer and Reviewing Authority, that fact itself without anything further, would not diminish the considered assessment made by the Reporting Authority and Reviewing Authority of the petitioner-officer nor could it be said that their opinion is not a relevant consideration in decision-making by of the Screening Committee whether the petitioner-officer should be retired compulsorily under Rule 42 of the Rules.

11. Nodoubt, in paragraph 17 of the order of the Tribunal, the Tribunal has referred to what is reflected in the A.C.Rs record of the petitioner during certain years. We do not know whether those remarks are justified or not; whether they were communicated to the petitioner etc., but, the fact remains that despite all those adverse remarks in the previous years, the Government itself, in its wisdom and considered opinion, thought it fit to permit the petitioner to cross the Efficiency Bar on 8.6.1984 and within a short time of four months,

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there was absolutely no good reason for the Government to think that the petitioner had lost continued utility and efficiency to be in public service and his continuity in service would not be in the public interest. Therefore, we are constrained to observe that the action of the Government in retiring the petitioner compulsorily resort into Rule 42 of the Rules, in the facts and circumstances of the case and evidence on record, is arbitrary, unreasonable and violative of Article 14 postulates.

12. In the result and for the foregoing reasons, we allo the writ petition and quash the impugned order dated 8.10.1984 and order dated 1.9.1998 passed by the Tribunal. The petitioner is entitled to all benefits, pecuniary and otherwise, flowing from the quashing of the impunged order of the Government dated 8.10.1984.

13. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

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